



## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

**[Docket No. NHTSA – 2016-0080]**

#### **Notice of Buy America Waiver**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of Buy America waiver.

**SUMMARY:** This notice provides NHTSA's finding with respect to a request to waive the requirements of Buy America from the New Hampshire Office of Highway Safety (New Hampshire). NHTSA finds that a non-availability waiver of the Buy America requirement is appropriate for the purchase of five (5) Sokia SX Robotic total stations using Federal highway traffic safety grant funds because there are no suitable products produced in the United States.

**DATES:** The effective date of this waiver is **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Written comments may be submitted using any one of the following methods:

- **Mail:** Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.
- **Fax:** Written comments may be faxed to (202) 493-2251.
- **Internet:** To submit comments electronically, go to the Federal regulations website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may also call the Docket at 202-366-9324.

#### **FOR FURTHER INFORMATION CONTACT:**

For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202-366-0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202-366-5263). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

#### **SUPPLEMENTARY INFORMATION:**

This notice provides NHTSA's finding that a waiver of the Buy America requirement, 23 U.S.C. § 313, is appropriate for New Hampshire to purchase five (5) Sokia SX Robotic total stations. The cost for all five stations amount to \$135,000 using grant funds authorized under 23 U.S.C. §§ 402 and 405(d). Section 402 funds are available for use by state highway safety programs that, among other things, reduce or prevent injuries and deaths resulting from speeding motor vehicles, driving while impaired by alcohol and or drugs, motorcycle accidents, school bus accidents, unsafe driving behavior and improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures. 23 U.S.C. § 402(a). Section 402 funds are also available to states for accident investigations to determine the

probable causes of accidents, injuries and deaths. *Id.* Section 405(d) funds are available for section 402 activities provided that a State has adopted and is enforcing a mandatory alcohol-ignition interlock law for all individuals convicted of driving under the influence of alcohol or of driving while intoxicated. 23 U.S.C. 405(d)(6).

Buy America provides that NHTSA “shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.” 23 U.S.C. 313. However, NHTSA may waive those requirements if “(1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.” 23 U.S.C. 313(b).

New Hampshire seeks a waiver to purchase five (5) Sokia SX Robotic total stations for the New Hampshire State Police, Collision Analysis and Reconstruction Division using Federal grant funds at a cost of \$135,000 for all five. A total station is an electronic/optical instrument used in modern surveying and accident reconstruction. Specifically, a total station is an electronic theodolite integrated with an electronic distance meter to read slope distances from the instrument to a particular point. According to New Hampshire, a total station is an important piece of forensic mapping equipment that is used as an on-scene reconstruction tool that assists in determining the cause of a crash and can support crash investigations in a timely, efficient manner, allowing for quicker highway clearance and traffic flow. The total station is designed to gather evidence of events, leading up to, during and following a crash.

New Hampshire notes that there are three types of total stations: Basic, Reflectorless and Robotic. A basic total station consists of a control head, prism (reflector), data collector, and requires two people to operate. A reflectorless total station contains the same equipment, but, it can be used without the prism in a single person operation that still requires manual operation. The robotic total station contains some of the same equipment as the basic and reflectorless total stations, however, the control head is robotic and motorized allowing it to track the prism and focus automatically making the robotic total station easy to use by one individual without having to operate it manually.

Based upon its experience, New Hampshire states that the Sokkia Robotic Total Station is the most efficient piece of equipment to complete investigations, clear highways, and continue the normal flow of traffic. New Hampshire adds that the robotic total station is twice as fast as the basic and reflectorless total stations.

New Hampshire asserts that there are no total station models that are manufactured or assembled in the United States. In support of its waiver, New Hampshire states it conducted extensive due diligence and found there are no robotic total station models that are manufactured or assembled in the United States.

On November 19, 2015, NHTSA published its decision to waive the requirements of Buy America for the North Carolina Highway Safety Office to purchase a Nikon Nivo 5M plus Reflectorless total station. *See* 80 FR 72480. In that notice, the agency noted that both North Carolina and NHTSA performed market analyses which revealed that all total station equipment are foreign made.<sup>1</sup> *Id.* at 72481. On March 10, 2016, NHTSA published its determination that it

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<sup>1</sup> In our November 19, 2015 notice, we noted that the combined market research of North Carolina and NHTSA found that the following manufacturers produced foreign made total stations: CT Berger (China); Leica (Switzerland); Nikon (Japan); Spectra Precision (Japan); Northwest Instruments (China); Topcon (Japan); Trimble (Sweden); Hi-Target Instrument Surveying Co. Ltd. (China); geo-Fennel GmbH (Germany); Hilti (Liechtenstein);

was appropriate to grant a waiver from the Buy America requirements to the Maine Bureau of Highway Safety in order to purchase a Leica reflectorless total station. 81 FR 12780-81 (March 10, 2016). The agency did not receive any comments in response to these two notices that would inform it that there are domestic manufacturers of total stations. At this time, the agency is unaware of any type of total station (Basic, Reflectorless and Robotic) produced domestically.

NHTSA agrees that the total stations advance the purpose of section 402 to improve law enforcement services in motor vehicle accident prevention and post-accident reconstruction and enforcement. A total station is an on-scene reconstruction tool that assists in the determination of the cause of the crash and can support crash investigations. It is an electronic/optical instrument that specializes in surveying with tools to provide precise measurements for diagramming crash scenes, including a laser range finder and a computer to assist law enforcement to determine post-accident reconstruction. The total station system is designed to gather evidence of the events leading up to, during and following a crash. These tools are used to gather evidence to determine such facts as minimum speed at the time of a crash, the critical speed of a roadway curve, the distance a vehicle may have traveled when out of control and other factors that involve a crash investigation. In some instances, the facts collected through the use of a total station are used to form a basis of a criminal charge or evidence in a criminal prosecution.

Based upon NHTSA's recent market analysis, and lack of comment in response to our two prior notices on total stations, we are unaware of any total station equipment (Basic, Reflectorless and Robotic) that is manufactured domestically. *Ibid.* Since a total station is unavailable from a domestic manufacturer and the equipment would assist in post-accident

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North Surveying (Spain); South Precision Instrument (China); Ruide Surveying Instrument Co. (China); Pentax (Japan/China); and Topcon (Japan, China and Thailand).

reconstruction and enforcement to advance the purpose of 23 U.S.C. 402 and 405(d), a Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to New Hampshire in order to purchase the robotic total station equipment. This waiver applies to New Hampshire to purchase five (5) Sokia SX Robotic total stations for the purposes mentioned herein, and all other states seeking to use sections 402 and 405(d) funds for these types of total stations. This waiver is effective through fiscal year 2016 and expires at the conclusion of the fiscal year (September 30, 2016). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate for the Sokia SX Robotic total station.

Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider this finding if, through comment, it learns additional relevant information regarding its decision to grant New Hampshire's waiver request.

This finding should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

**Authority:** 23 U.S.C. 313; Pub. L. 110-161.

Issued in Washington, DC on July 25, 2016\_\_\_\_\_.

under authority delegated in 49 CFR part 1.95

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Paul A. Hemmersbaugh,  
Chief Counsel

Billing Code: 4910-59-P  
(signature page for Notice of Buy America waiver)

[FR Doc. 2016-17972 Filed: 7/28/2016 8:45 am; Publication Date: 7/29/2016]